

January 28, 2002

The Honorable David M. Walker  
Comptroller General of the United States  
U.S. General Accounting Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Walker:

We are writing to request the U.S. General Accounting Office undertake an analysis of various anti-terrorism measures announced by the Bush Administration after enactment of the USA PATRIOT Act. Specifically, we are concerned about the potential threat to our civil liberties posed by (1) the Presidential Order authorizing secret military tribunals to try suspected terrorists and those with alleged ties to them; (2) the Bureau of Prisons regulation permitting the government to eavesdrop without a court order on attorney-client communications of certain detainees; (3) the ongoing detention of hundreds of individuals in the aftermath of September 11 without public disclosure of many relevant facts about the circumstances of detention; and (4) the program under which the Attorney General has asked state and local law enforcement agencies to interview some 5,000 immigrants without particularized suspicion.

While the Administration has published in the Federal Register the legal instruments underlying some of these policies, such as the October 31 Bureau of Prisons regulation authorizing government agents to monitor attorney-client communications and the November 13 Presidential Order authorizing military trials, the extent to which these programs infringe on civil rights will depend on the manner in which the government implements them. Similarly, the letter from the Attorney General to law enforcement agencies directing widespread questioning of immigrants is publicly available, but the manner in which these interviews are carried out may vary among jurisdictions.

A core function of the GAO is to review executive agency activities to assure Congress and the American people that government authority is exercised within the limits of statutory and constitutional authority. To that end, we request you review the following:

First, we understand from press reports that draft regulations concerning military tribunals are being circulated for comment. When these regulations are finalized, we request that you review them. We are particularly interested in the following issues and will work with you to define these issues further:

- In which specific ways will the procedures in these military trials differ from those utilized in civilian criminal trials?
- In which specific ways will the procedures in these military trials differ from those utilized in the current military justice system?

- Will there be independent judicial review of judgments emanating from these military tribunals? The November 13 order appears to preclude such review, but Administration officials have subsequently suggested that judicial review will be available. If so, will such review be available through appeal or by writ of habeas corpus?
- The November 13 order appears to subject to the jurisdiction of military tribunals any non-citizen accused of engaging in terrorism, aiding terrorists or harboring terrorists, even if such non-citizens have no affiliation with Al Qaeda or its activities, and even if such individuals reside legally in the United States. What criteria will be used to determine which non-citizens are tried in these tribunals and which will be tried in civilian courts?

With respect to attorney-client communications:

- What criteria are the Department of Justice using to decide that there are grounds to monitor attorney-client communications? What procedures are in place to protect the confidentiality of these communications?
- How many detainees have been subject to this monitoring? What factors relating to their cases made them fall within the criteria?

With respect to detentions:

- How many individuals have been detained by the Department of Justice in connection with the anti-terrorism investigation?
- How many of the individuals have been detained because of their connection to the September 11 attacks? Of the others, how many have been detained preventively because it was suspected they would engage in terrorism if released from custody? On what basis were such determinations made?
- Based on a scientifically-valid sample, what was the cited legal basis for detention; did the individuals have legal counsel; what limits, if any, were placed on the rights of detainees to consult with their lawyers; what special limits, if any, were placed on the conditions of confinement of such detainees; and what is the status of each case?
- In the case of a detainee who is deportable but whose country of origin will not accept him, what is the Administration doing to meet the constitutional

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requirements set forth by the Supreme Court in *Zadvydas v. Davis*, 121 S. Ct. 2491 (2001)?

With respect to the questioning of immigrants:

- What specific criteria did the Department of Justice use in compiling the list of immigrants subject to questioning under this program?
- What guidance, if any, has the Department of Justice provided the interviewing agencies on procedures for the questioning? What processes, if any, exist to ensure that the questioning is voluntary and not coercive? What actions did the interviewing agencies take when an individual did not comply voluntarily with the questioning requests? What information do the Department of Justice and immigrant rights groups have indicating whether the interviews were arranged and conducted voluntarily?
- What information did the Department of Justice receive from the interviewing agencies on the number of immigrants they found and the number who voluntarily submitted to the questioning? Were the findings of these interviews compiled?

We would like to meet with your staff assigned to this review at their earliest convenience to discuss the scope and timing of this request. Thank you in advance for your consideration.

Sincerely,

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John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
U. S. House of Representatives

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Russell D. Feingold  
Chairman  
Subcommittee on the Constitution  
Committee on the Judiciary  
U. S. Senate